

ERIC A. SEITZ
ATTORNEY AT LAW
A LAW CORPORATION

ERIC A. SEITZ 1412
LAWRENCE I. KAWASAKI 5820
RONALD N.W. KIM 8306
820 Mililani Street
Suite 714
Honolulu, Hawaii 96813
Telephone No.: (808) 533-7434
Facsimile No.: (808) 545-3608

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

UNITED PUBLIC WORKERS,)	CIVIL NO. 03-00598 DAE/LEK
AFSCME LOCAL 646, AFL-CIO,)	
MUTUAL AID FUND TRUST,)	DEFENDANT GARY W.
)	RODRIGUES' FIRST
Plaintiff,)	AMENDED PRETRIAL
)	STATEMENT; CERTIFICATE
vs.)	OF SERVICE
)	
GARY W. RODRIGUES,)	Conference: July 17, 2007
)	9:00 a.m.
Defendant.)	Mag. Kobayashi
)	

(Trial: August 28, 2007)

DEFENDANT GARY W. RODRIGUES'
FIRST AMENDED PRETRIAL STATEMENT

Defendant Gary W. Rodrigues, by and through his undersigned attorneys, hereby submits his First Amended Pretrial Statement pursuant to Local Rule 16.6, Rules of the United States District Court for the District of Hawaii.

I. Jurisdiction and Venue

Jurisdiction and venue are appropriate, as currently alleged, since the Plaintiff operates pursuant to federal law and all of the Defendant's relevant acts or omissions took place in Hawaii – subject, however, to the addition of certain indispensable parties who may not be amenable to jurisdiction in the District of Hawaii.

II. Substance of the Action

In approximately 1991, the trustees of the United Public Workers Pension Fund and the Mutual Aid Fund Trust ("Mutual Aid Fund") retained a financial advisor named Albert A. Hewitt to recommend and handle investments for both the union pension fund and the Mutual Aid Fund. When he was first hired Mr. Hewitt was affiliated with Smith Barney, a well known and highly reputable securities and investment firm, and came well recommended to the UPW on the basis for his investment services to other entities in Hawaii and elsewhere. Mr. Hewitt submitted regular reports to the boards of the pension fund and the Mutual Aid Fund, and both his activities and his continued retention were scrutinized and regularly authorized by the trustees of both the pension fund and the Mutual Aid Fund.

At some point Mr. Hewitt recommended certain investments of trust monies

in a Florida business that manufactures and markets safety equipment utilized by firefighters. The investments were duly authorized and approved by the trustees of the Mutual Aid Fund. Subsequently, when the Florida company appeared to be struggling and the UPW received information that Mr. Hewitt's advice may have been tainted by his own business interests, the trustees authorized the hiring of lawyers to file and pursue litigation in Florida against both the company and Mr. Hewitt. The current status of that litigation is unknown to Defendant Rodrigues.

Although Defendant Rodrigues was not a trustee who voted for and approved the hiring of Mr. Hewitt and/or the investments that were entrusted to Mr. Hewitt, Plaintiff has brought this suit against Mr. Rodrigues alleging unspecified breaches of his fiduciary duties owed to the Mutual Aid Fund.

III. Undisputed Facts

- A. Plaintiff United Public Workers, AFSME Local 646, AFL-CIO, Mutual Aid Fund Trust is an employee welfare benefit fund under ERISA.
- B. The Mutual Aid Fund is administered in the District of Hawaii.
- C. Defendant Rodrigues resides in the District of Hawaii.
- D. Defendant Rodrigues served as Plan Administrator of the Mutual Aid Fund, and was not a Trustee or a voting member of the Board of Trustees.
- E. This Court has personal jurisdiction over Defendant Rodrigues.

F. Best Rescue Systems, Inc. ceased all interest payments on its loans from Mutual Aid Fund in September, 1999, thus defaulting under the terms of their promissory notes.

IV. Disputed Facts

All other material facts alleged in the Complaint are disputed.

V. Relief Sought

Plaintiff seeks judgment for all losses resulting from Defendant Rodrigues' alleged breaches of his ERISA fiduciary duties, and their attorneys fees and costs.

VI. Previous Motions

Defendant's motion to dismiss the instant action filed January 16, 2004 was denied by the Court on April 6, 2004. Defendant will be filing a motion for summary judgment prior to the current dispositive motions deadline.

VII. Witnesses, Exhibits, Discovery

Defendant will call several former trustees of the Mutual Aid Fund Trust as witnesses in the trial of this case including, but not limited to, Joseph Vegas, Stephen Perreira, and Harold Moniz.

Defendant will also testify, may call the witnesses named by other parties, and any additional witnesses identified through further discovery.

VIII. Trial

A non-jury trial of this matter is currently scheduled to commence on

August 28, 2007.

Dated: Honolulu, Hawaii, March 21, 2007.

/s/ Eric A. Seitz
ERIC A. SEITZ
LAWRENCE I. KAWASAKI
RONALD N.W. KIM

Attorneys for Defendant
Gary W. Rodrigues

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that one copy of the within was duly served this date electronically via CM/ECF upon the following at the address listed below:

JAMES E.T. KOSHIBA, ESQ.
CHARLES A. PRICE, ESQ.
KOSHI BA, AGENA & KUBOTA
2600 Pauahi Tower
1001 Bishop Street
Honolulu, Hawaii 96813
E-mail: cprice@koshibalaw.com

Dated: Honolulu, Hawaii, March 21, 2007.

/s/ Eric A. Seitz _____
ERIC A. SEITZ